

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HDT Bio Corp.,

Plaintiff,

v.

Emcure Pharmaceuticals, Ltd.,

Defendant.

No. 2:22-cv-00334-JLR

**DEFENDANT EMCURE  
PHARMACEUTICALS, LTD.'S REPLY  
IN SUPPORT OF ITS MOTION TO  
STAY DISCOVERY PENDING THE  
OUTCOME OF ITS MOTION TO  
DISMISS PURSUANT TO RULES  
12(b)(2) AND (6), OR,  
ALTERNATIVELY, TO DISMISS  
UNDER THE DOCTRINE OF FORUM  
NON CONVENIENS; OR,  
ALTERNATIVELY, TO STAY**

**NOTE ON MOTION CALENDAR:  
June 3, 2022**

**JURY TRIAL DEMANDED**

**ORAL ARGUMENT REQUESTED**

## I. INTRODUCTION

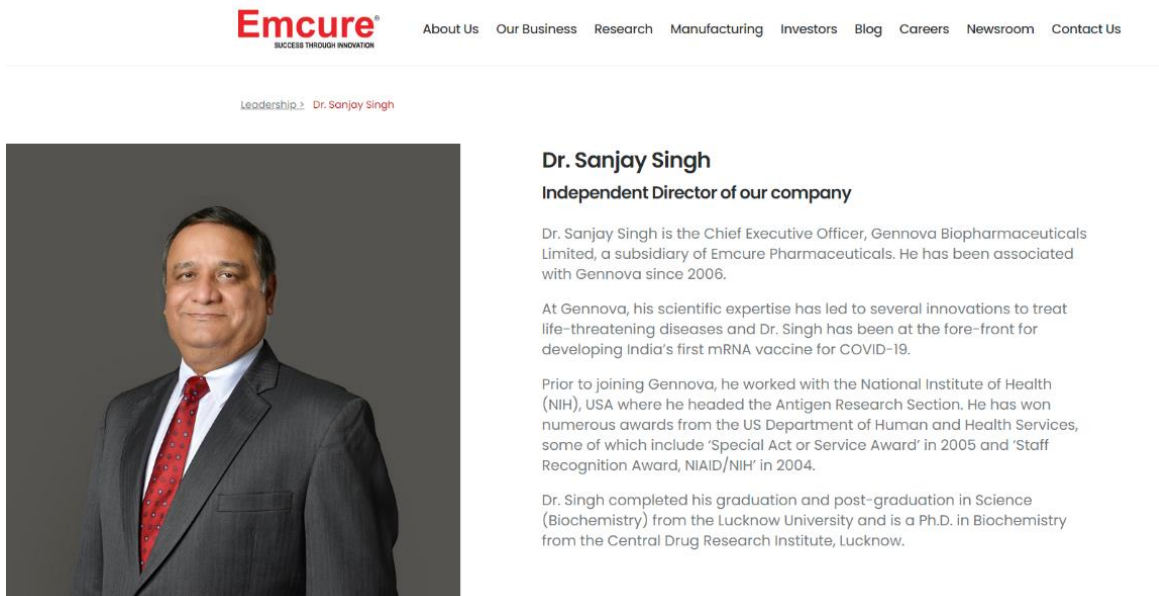
HDT's opposition to Emcure's Motion to Stay Discovery is filled with hyperbolic accusations that has very little to do with whether this Court should stay discovery pending adjudication of Emcure's Motion to Dismiss. Lacking any honest basis to assert jurisdiction over Emcure in this Court, HDT has resigned itself to cherry-picking snippets of Emcure's website—which unequivocally provide Dr. Sanjay Singh's role is the Chief Executive Officer of *Gennova*, lifting quotes from a parent company mentioning the efforts of its subsidiary, mischaracterizing articles and submitting self-serving declarations with multiple layers of hearsay of what Gennova employees supposedly told HDT employees. None of this changes the fact that exercise of personal jurisdiction over Emcure would be inappropriate. But for now, staying discovery pending adjudication of Emcure's Motion to Dismiss is prudent, conserves party and judicial resources and is consistent with precedent when there is a challenge to whether the Court can exercise personal jurisdiction over Emcure. *See Blackstone Int'l, Ltd. v. E2 Ltd.*, 2022 WL 522950, at \*1 (W.D. Wash. 2022) (interests of judicial economy warrant stay of discovery pending motions to dismiss based on lack of personal jurisdiction).

## II. DR. SINGH DID NOT REPRESENT EMCURE AT ANY POINT DURING THE ALLEGATIONS CONTAINED IN HDT'S COMPLAINT

HDT's response to Emcure's Motion to Stay Discovery makes one thing clear: HDT's entire basis for asserting that this Court has personal jurisdiction over Emcure is based on the actions of Dr. Sanjay Singh. Emcure did not ignore his contacts with Washington in its Motion; they are simply irrelevant. Dr. Singh is not an "independent director" or a representative of Emcure. HDT's response, and in particular the declaration of attorney Dana Berkowitz, goes to great lengths to establish that Dr. Singh was somehow acting in a representative capacity for Emcure. This is not true for several reasons.

First, as Mr. Mathur's declaration made clear, Dr. Singh "did not travel to Washington—or anywhere else—on Emcure's behalf or direction." (ECF 24 at ¶ 16.) **HDT never rebuts this assertion.** Instead, it parses the other assertions in Mr. Mathur's declaration and attaches a printout from Emcure's website to reach its contrived conclusion that Dr. Singh was an independent director for Emcure. Not so. Paragraphs fourteen, fifteen, and sixteen of Mr. Mathur's declaration provide that Dr. Singh was not an independent director of Emcure's board *at the time of the events alleged* in the Complaint nor was he acting in any representative capacity for Emcure during this time. However, for the sake of clarity, Emcure will provide a supplemental declaration as soon as possible to this reply which establishes the same—that Dr. Singh has never been appointed to Emcure's board of directors, and he is not an "independent director" for of Emcure—nor was he ever. (*See* Second Mathur Decl. at ¶¶ 5-10.) Rather, he is a Whole-time director for Gennova. (*Id.* at ¶ 5.)

Second, the printout from Emcure's webpage which counsel attaches to her declaration is clear on Dr. Singh's role:



The screenshot shows the Emcure website header with the logo and navigation links: About Us, Our Business, Research, Manufacturing, Investors, Blog, Careers, Newsroom, Contact Us. Below the header, there is a section titled "Leadership" with a sub-header "Dr. Sanjay Singh". To the left is a portrait of Dr. Sanjay Singh, a man in a suit and tie. To the right is a text block about him.

**Dr. Sanjay Singh**  
Independent Director of our company

Dr. Sanjay Singh is the Chief Executive Officer, Gennova Biopharmaceuticals Limited, a subsidiary of Emcure Pharmaceuticals. He has been associated with Gennova since 2006.

At Gennova, his scientific expertise has led to several innovations to treat life-threatening diseases and Dr. Singh has been at the fore-front for developing India's first mRNA vaccine for COVID-19.

Prior to joining Gennova, he worked with the National Institute of Health (NIH), USA where he headed the Antigen Research Section. He has won numerous awards from the US Department of Human and Health Services, some of which include 'Special Act or Service Award' in 2005 and 'Staff Recognition Award, NIAID/NIH' in 2004.

Dr. Singh completed his graduation and post-graduation in Science (Biochemistry) from the Lucknow University and is a Ph.D. in Biochemistry from the Central Drug Research Institute, Lucknow.

1 Unequivocally, the webpage provides that Dr. Singh is the Chief Executive Officer of Gennova.  
 2 As displayed in Exhibit A to the Berkowitz Decl., Dr. Singh is listed in “Senior Management”  
 3 along with other top executives of Emcure’s India-based subsidiaries. That Emcure recognizes  
 4 the leadership of its subsidiaries does not somehow make Dr. Singh an employee, director, or  
 5 officer of Emcure—or “independent director.” The fact that Dr. Singh is not an independent  
 6 director of Emcure is made clear from Exhibit A to the Berkowitz Decl., which sets forth all of  
 7 Emcure’s directors. Dr. Singh is not identified. Indeed, it is not until you actually view Dr.  
 8 Singh’s profile that you come across the phrase “independent director of our company.” Dr.  
 9 Singh is a director for one of Emcure’s various subsidiaries, Gennova, not Emcure itself. In  
 10 short, the phrase “independent director of our company” is simply a reference to Emcure’s  
 11 collective subsidiaries, not Emcure itself.<sup>1</sup>

12 HDT’s declarations do nothing to dispute Mr. Marthur’s assertion that Dr. Singh “did  
 13 not travel to Washington—or anywhere else—on Emcure’s behalf or direction.” (ECF 24 at ¶  
 14 16.) For instance, in Dr. Steven Reed’s declaration, he claims “Dr. Sanjay Singh repeatedly  
 15 told me that his hands were tied by Emcure regarding important decisions relating to the License  
 16 Agreement.” This is merely a reiteration of the allegations in the complaint. Moreover, if this  
 17 was sufficient to rebut Emcure’s declaration, there would be no point in allowing litigants to  
 18 submit declarations. Thus, HDT must do more than simply reassert its allegations in the  
 19 complaint and its failure to do so is fatal. The other assertions by Dr. Steven Reed—that Dr.  
 20 Singh told him “we would find a way [to] pay HDT the royalties that Gennova owed under the  
 21 License Agreement . . .” or that “we would resign if Emcure would not allow him to cause  
 22 Gennova to issue payment of royalties to HDT”—only supports Emcure’s position: that Dr.  
 23 Singh was not acting on Emcure’s behalf but rather, if true as HDT alleges, Dr. Singh was  
 24

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25 <sup>1</sup> As indicated *infra*, this is consistent with how Emcure refers to itself in public filings.

1 acting against Emcure’s alleged interests. *See Salyers v. Metropolitan Life Ins. Co.*, 871 F.3d  
 2 934, 939 (9th Cir. 2017) (explaining agency is “the fiduciary relationship that arises when one  
 3 person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on  
 4 the principal’s behalf and subject to the principal’s control, and *the agent manifests assent or*  
 5 *otherwise consents so to act.*”) (emphasis added).

6 Likewise, Dr. Amit Khandar’s declaration should be disregarded by this Court because  
 7 it is based on inadmissible hearsay without a modicum of reliability. *Agne v. Papa John’s Int’l,*  
 8 *Inc.*, 2012 WL 12882904, at \*3 (W.D. Wash. 2012) (plaintiff’s declaration did not contribute  
 9 to a *prima facie* showing of personal jurisdiction because it was based on inadmissible hearsay).

10 Moreover, HDT’s argument craters on itself. HDT knows that Dr. Singh represented  
 11 Gennova—indeed, it is those communications and trips to Seattle, Washington that led to the  
 12 HDT/Gennova License Agreement, now the subject of a separate arbitration in London. HDT  
 13 knows that Emcure is not a party to the license agreement. So, its only basis for jurisdiction is  
 14 to now transform Dr. Singh from Gennova’s CEO to an Emcure agent. HDT cannot have it  
 15 both ways. Based on the declarations of Vishal Mathur, Dr. Singh does not represent, and has  
 16 never represented, Emcure. Discovery should be stayed pending adjudication of Emcure’s  
 17 motion to dismiss. *See Blackstone*, 2022 WL 522950, at \*1 (interests of judicial economy  
 18 warrant stay of discovery pending motions to dismiss based on lack of personal jurisdiction).

### 19 **III. EMCURE DOES NOT ENGAGE (AND HAS NEVER ENGAGED) IN VACCINE** 20 **DEVELOPMENT, VACCINE MANUFACTURING, OR VACCINE SALES**

21 Emcure’s praise and discussion of the ongoing work of its subsidiary, Gennova, does  
 22 not pierce the corporate veil as HDT would suggest. HDT’s response brief and the declaration  
 23 of Attorney Berkowitz attempt to suggest otherwise by offering partial, out-of-context quotes  
 24 which discuss Gennova’s work on the mRNA COVID-19 vaccine.  
 25

1 First, HDT cites to statements Emcure made in its filing for an initial public offering  
 2 and contends this is evidence that Emcure engages in vaccine development. What HDT fails to  
 3 mention is that nearly all of these statements start with the word “we” or “our” which are  
 4 explicitly defined in the public filing to include Emcure *and its subsidiaries*. (See Exhibit A,  
 5 Excerpt of Emcure’s Draft Red Herring Prospectus.) Thus, the statements HDT clings to are  
 6 nothing more than Emcure identifying its subsidiaries’ accomplishments. See *Corcoran v. CVS*  
 7 *Health Corp.*, 169 F. Supp. 3d 970, 984 (N.D. Cal. 2016) (recognizing that separate corporate  
 8 entities may present themselves as a single entity for marketing or trade purposes).

9 Second, Ms. Berkowitz attaches an article from *Money Control* to establish that Emcure  
 10 is somehow lying about its role in the vaccine. Counsel should know better: the title of this  
 11 article dispels HDT’s argument. The title reads “Emcure says *Gennova is working* on  
 12 backward integration of its mRNA COVID-19 vaccine.” (emphasis added) (Berkowitz Decl. at  
 13 ¶ 7, Ex. C.) Again, HDT’s erroneous suggestion that the editorializing in this article that blurs  
 14 the lines between Emcure and Gennova somehow pierces the corporate veil is at odds with legal  
 15 precedent which requires the parent exercising substantial control over the subsidiary. See  
 16 *Corcoran*, 169 F. Supp. 3d at 984 (separate corporate entities may present themselves as a single  
 17 entity for marketing or trade purpose without imputing acts of one to another for jurisdictional  
 18 purposes). Cherry-picking websites and mischaracterizing documents will not do.

19 HDT also relies on Exhibit E to the Berkowitz Declaration, which again is a news article  
 20 entitled, “*Gennova* seeks to start trials of indigenous mRNA vaccine.” Again, this article  
 21 explicitly states that Gennova (not Emcure) is the company conducting trials for the vaccine,  
 22 yet HDT attempts to use the inclusion of quotes from an Emcure executive discussing the work  
 23 of its subsidiary—and HDT’s own tortured interpretations of those quotes—to pierce the  
 24 corporate veil. This cannot square with basic case law set forth in Emcure’s Motion to Dismiss.  
 25

1 Finally, HDT's supposed smoking gun is the use of an email address at an Emcure  
 2 domain as the main contact listed on the initial clinical trial application. (Berkowitz Decl. ¶ 8.)  
 3 At the time, Emcure and each of its India-based subsidiaries used a single email address,  
 4 maheshwari.mishra@emcure.co, for form filings with the Central Drugs Standard Control  
 5 Organization. (Second Mathur Decl. at ¶¶11-12.) This does not demonstrate substantial control.

6 Moreover, even accepting the double and triple hearsay declarations of Amit Khandhar  
 7 and Steven Reed, and all of HDT's cherry-picked quotes at face value, none of them establish  
 8 Gennova as Emcure's alter ego. This Court must find not that Emcure has oversight of  
 9 Gennova, but that it exercises "substantial control" over Gennova's day-to-day activities. *See*  
 10 *In re Cal. Gasoline Spot Mkt. Antitrust Litig.*, No. 20-CV-03131-JSC, 2021 WL 4461199, at \*4  
 11 (N.D. Cal. Sept. 29, 2021) (explaining that while the evidence shows there was regular  
 12 oversight, it does not reflect control over the subsidiary's day-to-day operations); *see also*  
 13 *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980) (finding no  
 14 alter ego or agency where parent placed its own directors on subsidiary's board, guaranteed  
 15 loans for subsidiary, reviewed and approved subsidiary's major decisions, and had involvement  
 16 in subsidiary's pricing). HDT's opposition is clear—aside from personal attacks and  
 17 accusations, mischaracterized articles, and cherry-picked snippets from websites—HDT has no  
 18 support that Emcure has substantial control over Emcure.<sup>2</sup>

#### 19 IV. CONCLUSION

20 For the reasons stated herein, as well as those in Emcure's Motion to Stay, this Court  
 21 should grant the Motion to Stay pending adjudication of Emcure's Motion to Dismiss.

22  
 23 <sup>2</sup> HDT makes several attacks concerning HDT's flouting the Court's Order and federal rules with respect  
 24 to its discovery obligations. To be clear, Emcure is in no way disrespecting or ignoring the Court's  
 25 Order or its discovery obligations. Emcure has been upfront and direct with HDT. It asked HDT's  
 counsel to stay discovery, both with respect to adjudication of the Motion to Dismiss as well as the  
 Motion to Stay. HDT refused.

1 DATED: June 3, 2022

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 3, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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